

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New Fortress Energy LLC)	
)	Docket No. CP20-466-000
)	

**MOTION FOR LEAVE TO RESPOND TO NEW FORTRESS ENERGY'S
OCTOBER 1, 2020 LETTER AND COMMISSIONERS' INQUIRIES AT THE
JANUARY 21ST COMMISSIONERS' MEETING**

Comité Pro Seguridad y el Ambiente del Barrio Sabana; Comité Diálogo Ambiental, Inc.; El Puente de Williamsburg, Inc. - Enlace Latino de Acción Climática; Comité Yabucoño Pro-Calidad de Vida, Inc.; Alianza Comunitaria Ambientalista del Sureste, Inc.; Sierra Club Puerto Rico, Inc.; Mayagüezanos por la Salud y el Ambiente, Inc.; Coalición de Organizaciones Anti Incineración, Inc.; Amigos del Río Guaynabo, Inc.; Campamento Contra las Cenizas en Peñuelas, Inc.; and Unión de Trabajadores de la Industria Eléctrica y Riego, (collectively, “Movants”), pursuant to 18 C.F.R. 385.212, file this Motion For Leave to Respond to New Fortress Energy’s October 1, 2020 letter and the statements made by Commissioners at the January 21, 2021 Commissioners’ meeting. If the Motion For Leave to Respond is granted, the Response follows below.

Argument

1. PREPA is still planning to build a second pipeline from the New Fortress Energy LNG Terminal to a San Juan area gas plant.

New Fortress Energy’s San Juan LNG Terminal already supplies gas to the San Juan Generating Station powerplant (in an unreliable, unaffordable and unsafe manner¹) through a pipeline, fulfilling the first prong of the two-prong test laid out in *Shell U.S. Gas & Power, LLC*, 148 FERC ¶ 61,163, at P. 39 (2014) and the June 2020 Order To Show Cause.² New Fortress Energy has erroneously claimed that its existing pipeline is somehow not a “pipeline” within the meaning of the NGA because it does not pass a litmus test of the company’s invention, comprising arbitrary physical characteristics not found in the NGA, nor in any FERC regulations or case law.³ Movants have previously shown this argument to be without merit, and note that the second proposed pipeline would fail the New Fortress Energy’s invented litmus test, as it crosses miles of public and private lands and numerous communities. In fact, New Fortress Energy has acknowledged that the second gas pipeline would fail its invented litmus test and make it even more clear that the LNG Terminal

¹ New Fortress Energy’s July 2020 Answer to the Order To Show Cause pointed out that in a previous FERC matter involving an LNG import terminal in Puerto Rico, the Commission raised significant concern about “the possibility of system expansion” New Fortress Energy LLC, Answer of New Fortress Energy LLC To The Order To Show Cause And Motion For Expedited Action at 32, FERC Dkt. No. CP20-466-000 (July 20, 2020) [Hereinafter “NFE July Answer”].

² On the second prong of the Shell test, all parties agree that the LNG tankers that deliver LNG to the LNG Terminal (e.g., the JS Ineos Independence, the Coral Energy, and the Coral Anthem) are all ocean-going bulk-carrier LNG tankers as defined by the International Maritime Organization. New Fortress Energy grudgingly admits that “Movants provide dimensions of smaller vessels that could be considered bulk-carriers” New Fortress Energy LLC, Answer of New Fortress Energy Inc. to the Joint Motion to Intervene and Motion For Leave to Answer and Answer to the Joint Protest at 14, FERC Dkt. No. CP20-466-000 (Aug. 14, 2020) [Hereinafter “NFE August Answer”].

³ *See, e.g.*, NFE July Answer at 20-25.

meets the first prong of the *Shell* test:⁴ “New Fortress understands that such a pipeline could subject the Facility to the Commission’s NGA Section 3 jurisdiction”⁵ Movants’ previous filings confirm the plans to construct a second gas pipeline from the New Fortress Energy LNG Terminal to another PREPA powerplant in the San Juan area, based on documents from Puerto Rico’s electric utility (“PREPA”), Puerto Rico’s utility regulator (“PREB”), and New Fortress Energy itself:

- New Fortress Energy acknowledged the possibility of providing gas from the LNG Terminal to the Palo Seco Power Station more than two years ago, in a March 2018 letter to U.S. Customs & Border Protection. The letter from New Fortress Energy counsel, describing the LNG Terminal, states: "Potential customers include the Palo Seco power plant..."⁶
- PREPA's proposed Integrated Resource Plan, June 2019, described a 4.2 mile, \$35M pipeline that would provide the Palo Seco Power Station "with max daily gas volume of 93.6 MMcf/day..."⁷
- The Puerto Rico Energy Bureau’s Final Resolution and Order, August 2020, acknowledged the possibility of a pipeline from the New Fortress Energy LNG Terminal to the Palo Seco Power Station.⁸

Throughout its responses, New Fortress Energy has insisted, without providing any evidence of their own, that no such pipeline is being planned.⁹ Recently,

⁴ NFE July Answer at 32. See also New Fortress Energy’s October 1, 2020 letter to FERC, FN 4.

⁵ New Fortress Energy LLC, Motion For Leave to Answer and Answer of New Fortress Energy Inc. to the Motion For Leave to Reply and Reply of the Joint Movants at 5, FERC Dkt. No. CP20-466-000 (Sept. 8, 2020) [Hereinafter “NFE September Answer”].

⁶ A true and accurate copy of the letter is attached as Attachment 2 of Local Environmental Organizations’ September 24, 2020 Sur-Reply.

⁷ Puerto Rico Electric Power Authority, Integrated Resource Plan 2018-2019 With Errata, Rev. 2.1, at Section 1.2, 5-14 Section 6.3.4, Section 1.2.2, Section 7.1.2.9, and Section 10.1.6.1, (June 7, 2019), PREB Docket CEPR-AP-2018-0001,

<https://energia.pr.gov/wpcontent/uploads/2019/06/IRP2019-Main-Report-REV2-06182019-wERRATA.pdf>.

⁸ Puerto Rico Energy Bureau, Case No. CEPR-AP-2018-0001, Final Resolution and Order on the Puerto Rico Electric Power Authority’s Integrated Resource Plan at para. 655 (Aug. 24, 2020), <https://energia.pr.gov/wp-content/uploads/sites/7/2020/08/AP20180001-IRP-Final-Resolution-and-Order.pdf>.

⁹ NFE August Answer at 33; NFE September Answer at 4-5; New Fortress Energy letter to FERC FN 4 (Oct. 1, 2020).

though, PREPA issued another document that confirms, again, that PREPA is planning for a new gas plant in the San Juan area, to be fueled by a new gas pipeline from the New Fortress Energy LNG Terminal:

Section 4.4.1.2 New Combined-Cycle Plant in the San Juan area [...]
In addition, a new combined-cycle power plant would offer the following benefits: [...]
The natural gas infrastructure is already in place in the San Juan area **(i.e., the New Fortress natural gas terminal)**¹⁰

This map locates the NFE Terminal and the Palo Seco Power Station:



Fig. 1: New Fortress Energy LNG Import Terminal and Palo Seco Power Station. This map also shows the Sabana community, which is caught between the LNG Terminal and Palo Seco. 40% of the Sabana community's residents live below the poverty line. Almost a quarter of its residents are above the age of 60, and another fifth are below the age of 18. American Community Survey, Census Tract 401.01, Guaynabo Municipio, Puerto Rico, US Census Bureau (2018). New Fortress Energy ignored the concerns and pleas of this environmental justice community when the company placed its unsafe, unreliable LNG Terminal less than half a mile away. *Image via Google Earth.*

¹⁰ PREPA Renewable Energy Integration Study, December 22, 2020, PREB Docket NEPR-MI-2020-0012 (emphasis added). Attachment 4 to PREPA's Motion in Compliance with Order Submitting Redacted/ Public Versions of Request For Proposal (RFP) and Appendices, PREB Docket NEPR-MI-2020-0012 (Jan. 11, 2021), <https://energia.pr.gov/wp-content/uploads/sites/7/2021/01/Motion-in-Compliance-with-Order-Submitting-Redacted-Public-Versions-of-Request-for-Proposal-RFP-and-Appendices-1.pdf> (emphasis added).

2. The Puerto Rico Legislature has begun an investigation into the safety and environmental risks posed by the New Fortress Energy LNG Terminal to nearby environmental justice communities.

New Fortress Energy’s FERC filings ignore the LNG Terminal’s impacts to environmental justice communities and instead repeatedly claim that the LNG Terminal helped the island recover from the emergency caused by Hurricane Maria.¹¹ This false contention has already been rejected by the Puerto Rico government: in 2018, New Fortress Energy sought to have its proposed LNG Import Terminal classified as a “critical project” by the Puerto Rico Office of Permit Management (“OGPe” by its Spanish initials), a designation reserved for emergency projects that would have allowed waiver of some permitting requirements. OGPe denied the company’s request,¹² determining that the project was not of high importance or necessary to address the post-Maria emergency. Instead, OGPe ruled that due to the “nature and intensity” of the proposed use, New Fortress Energy would be required to perform a full Land Use Consultation, including a public hearing with advance notice to nearby property owners.¹³

¹¹ NFE July Answer at 11, 42, 49, 53; NFE August Answer at 34.

¹² OGPe Order at 5.

¹³ Oficina de Gerencia de Permisos, Resolución Sobre Proyecto Crítico Para La Infraestructura, Núm. Caso 2018-216434-PCI-002587 at p. 4, ¶ 12 (Mar. 1, 2018) [Hereinafter “OGPe Order”]. A true and accurate copy of the OGPe Order is attached as Exhibit A. Remarkably, OGPe made this determination even though NFE’s application fundamentally understated the nature and intensity of its proposal: the application described the project as a “micro installation” that would “load liquefied natural gas onto trucks” to allow for “the transfer of said fuel . . . to clients in standard ISO containers,” without any mention of regasification operations or pipelines to either the San Juan or Palo Seco power plants. *Id.* at 1, ¶¶ 8-9.

On February 8th of this year, the Puerto Rico Legislature’s Committee on Internal Affairs found that New Fortress Energy never bothered to complete the required Land Use Consultation or public hearing. Thus, even that limited opportunity for public input was denied the community that would be subjected to pollution, increased truck traffic, risks of leaks and accidents, and other impacts from the New Fortress Energy LNG Import Terminal:

From the available information, it appears that New Fortress built the gas terminal without holding public hearings, or issuing a Land Use Consultation and without any citizen or municipal participation. Nor was there prior preparation of an Environmental Impact Statement available to the public, the Legislature or specialized public agencies. The Puerto Rico Ports Authority granted the New Fortress lease for twenty years, as to docks A, B and C, without any formalities or prior evaluation.

The safety and environmental risks of the New Fortress project have caused great concern in community, religious and environmental organizations. Thus, leaders and religious organizations of various denominations have spoken out on the matter and they even sent a letter to the federal authorities about it. It also arises from the available information that in 2015 the Government of Puerto Rico conducted a study, which did not recommend using a floating vessel as an LNG warehouse in the area of Warehouse A, B and C.

Therefore, it is urgent that this House of Representatives of the Commonwealth of Puerto Rico thoroughly examine everything pertinent to the form and manner in which the New Fortress LNG terminal was built and operates, its implications, alternatives, and environmental and community impacts.¹⁴

Due to these failures; the Committee on Internal Affairs unanimously approved a Resolution to begin an investigation “on all aspects of the project awarded to . . . New Fortress Energy, LLC, related to the construction and operation of the natural gas import and processing terminal in docks A, B and C in the Bay of Puerto

¹⁴ *Id.* (translated from the original Spanish).

Nuevo in San Juan; and to other related purposes.”¹⁵ The Resolution noted the LNG Terminal’s impacts to nearby communities:

Both in the entry route of the tankers, as well as in the areas near the storage and processing of the LNG, there are densely populated commercial and residential areas in the municipalities of Guaynabo, Cataño and San Juan. Such are residents of Barrio Sabana in Guaynabo who are located as close as some 400 meters from the New Fortress operations. Similarly, the staff at the Puerto Rico Electric Power Authority Puerto Nuevo generating plant are also at risk. These operations also emit atmospheric pollutants, including greenhouse gases.¹⁶

The Resolution initiates an investigation, to be concluded by May 10, 2021, specifically including the following:

- a. Risk and safety aspects of the [terminal and related operations] for residents, both of the areas near the methane gas terminal and its floating LNG warehouse, and those close to the LNG transport routes, for the workers, other personnel from the Electric Power Authority plant and New Fortress employees themselves;
- b. Whether all these safety aspects were considered by the Office of Permit Management (OGPE) regarding the authorizations granted to New Fortress and related documentation;
- c. Whether a Land Use Consultation and an Environmental Impact Statement were prepared and considered; whether or not the notification was available and approval of the public prior to the construction and operation of the Project awarded to New Fortress;
- d. Whether alternatives to the importation of natural gas were considered and the impact, if any, of the project awarded to New Fortress on [Puerto Rico’s] renewable energy goals;
- e. Adequacy and conditions of the 20-year lease between New Fortress and the Puerto Rico Ports Authority;
- f. Environmental and community impacts of the project.¹⁷

¹⁵ Puerto Rico House of Representatives, R C0170 at 1, (Jan. 11, 2021), <http://www.tucamarapr.org/dnncamara/Documents/Measures/6ac3d208-ea6f-40b8-a418-a332dc8b88ac.pdf> (translated from the original Spanish). A true and accurate copy of the Resolution is attached as Exhibit B.

¹⁶ *Id.* at 2 (translated from the original Spanish).

¹⁷ *Id.* at 3-4 (translated from the original Spanish).

This investigation will reveal the impacts of the New Fortress Energy LNG Terminal upon nearby environmental justice communities. FERC Chair Richard Glick has recently re-affirmed the central importance of environmental justice, and ensuring that environmental justice communities have a voice in these types of matters:

In referring to our NEPA analysis, we are supposed to take environmental justice into account and assess whether the impact on these communities can be eliminated or mitigated.

But I've seen at the Commission for three years -- but I've been at the Commission for three years, and I've seen little in the way of orders that do more than give lip service to environmental justice. That needs to change.¹⁸

Commissioner Chatterjee also stated that FERC must give full consideration to environmental justice impacts, as well as nearby communities' safety concerns.¹⁹ After being appointed Chair, Commissioner Glick announced a new senior position at FERC to ensure a more prominent role at FERC for environmental justice.

FERC can demonstrate its commitment to environmental justice by closely reviewing the results of the Puerto Rico Legislature's investigation, taking jurisdiction over the New Fortress LNG Terminal, requiring a full Environmental Impact Statement, and scheduling public hearings to listen to the Sabana community and other stakeholders.

¹⁸ January 19, 2021 Commissioners' Meeting Transcript 26:18, <https://www.ferc.gov/media/transcript-01-21-2021>.

¹⁹ "Current versions of these two Orders don't appropriately consider the comments on environmental justice and COVID in Sable Trail, and Algonquin doesn't take into account the comments made by nearby residents on safety. I think these are all important matters to which the Commission should give full consideration." *Id.*, 17:16 to 17:21.

3. FERC has the authority to petition a court for a preliminary injunction shutting down the illegal New Fortress Energy LNG Terminal.

At the January 19, 2021 Commissioners' meeting, the Commissioners considered this case. Commissioner Glick stated:

I will also be voting no today on C-2, which is the Draft Order disclaiming jurisdiction over an LNG facility in San Juan, Puerto Rico. I opposed this draft because the relevant definitions in the Natural Gas Act leave us no choice but to conclude that New Fortress must apply for preauthorization from the Commission.

I wanted to take a second to point out that, as I understand it, even if the Commission were to conclude that the facility is in fact FERC jurisdictional and requires Section 3 approval, it does not necessarily mean New Fortress would have to shut down the facility during the Section 3 proceeding.

Commissioner Glick's interpretation is correct. If FERC finds that the New Fortress Energy LNG Terminal does indeed fall under FERC jurisdiction, then 15 U.S.C. 717s(a) provides FERC with the authority to seek a preliminary injunction to shut the illegal facility down. FERC also has a broad range of other authority to determine the appropriate enforcement mechanisms to use against New Fortress Energy:

- FERC may issue an Order unequivocally stating that New Fortress Energy's construction and operation of the LNG import terminal without FERC approval violates the Natural Gas Act and the National Environmental Policy Act.
- FERC may issue an Order stating that New Fortress Energy is required to complete an Environmental Impact Statement for the LNG Terminal, with robust public participation, in accordance with the National Environmental Policy Act.
- FERC may issue an Order requiring New Fortress Energy to disgorge unjust profits obtained from operation of this facility back to PREPA ratepayers.²⁰


²⁰ FERC Revised Policy Statement on Enforcement, 123 FERC ¶ 61,156 para. 6. Enft of Statutes, Regulations & Orders, 123 FERC ¶ 61,156, 62009, at P 62009 (May 2008).

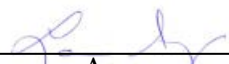
- 15 U.S.C. § 717t-1 authorizes FERC to issue a penalty of not more than \$1,307,164 per day per violation for as long as the violation continues.²¹ New Fortress Energy began constructing this illegal facility on March 15, 2019.


For all of these reasons, Movants urge the Commission to take action to enforce the Natural Gas Act and protect PREPA's workers and the citizens of San Juan and Puerto Rico.

²¹ Civil Monetary Penalty Inflation Adjustments, 86 Fed. Reg. 8131 (Feb. 4, 2021).

Respectfully submitted,

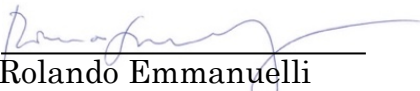

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CERTIFICATE OF SERVICE

I certify that on the on March 10th, 2021, I electronically filed the original document, Motion for Leave to Respond, on behalf of the Intervenor with

Kimberly D. Bose, Secretary
Nathaniel J. Davis, Sr., Deputy Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
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I further certify that I served this Motion for Leave to Respond and Certificate of Service on behalf of the Intervenor on all parties listed on the service list compiled by the Secretary in this proceeding electronically.

DATED: March 10th, 2021



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